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Standard Brands Paint Co. and United Food & Commercial Workers Union, Local 99, affiliated with United Food & Commercial Workers Union, AFL-CIO. Case 31-CA-22545

August 6, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

Upon a charge and amended charge filed by the Union on February 27 and April 10, 1997, the General Counsel of the National Labor Relations Board issued a complaint on May 23, 1997, against Standard Brands Paint Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On June 30, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On July 2, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 6, 1997, notified the Respondent that unless an answer were received by June 12, 1997, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation, with an office and place of business in Torrance, California, has operated a chain of retail

paint stores, including retail paint stores located in California and Arizona. At all material times, the Respondent, in the course and conduct of its business operations, annually has purchased and received goods or services valued in excess of \$50,000 directly from suppliers located outside the State of Arizona. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All employees of the Respondent employed in its retail paint stores located in the State of Arizona.

Excluded: All other employees, guards and supervisors, as defined in the Act.

Since on or before May 1, 1989, and at all material times thereafter, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in the collective-bargaining agreement described below.

At all times since May 1, 1989, and continuing to date, the Union has been the exclusive representative for the purposes of collective bargaining of the unit employees and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive collective-bargaining representative of all the unit employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

About May 1, 1989, the Respondent and the Union entered into a collective-bargaining agreement that was effective from May 1, 1989, through May 4, 1992 (the 1989-1992 agreement), which agreement has been automatically renewed pursuant to its terms through May 4, 1997, and covered rates of pay, wages, hours of employment, and other terms and conditions of employment of the unit employees.

About September 10, 1996, and continuing thereafter, the Respondent has failed and refused to continue in effect all of the terms and conditions of the 1989-1992 agreement by failing and refusing to respond to a grievance filed on behalf of unit employee Sandy Oxford and informing a union representative that the Respondent would refuse to process or resolve grievances until after the Respondent had received permission to do so from the Bankruptcy Court. The Respondent engaged in this conduct without the Union's

consent. These terms and conditions of employment are mandatory subjects for the purposes of collective bargaining.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent did interfere with, restrain and coerce, and is interfering with, restraining, and coercing, its employees in the exercise of their rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

By failing and refusing to respond to the grievance and informing the Union that the Respondent would refuse to process or resolve grievances until it received permission to do so from the Bankruptcy Court, the Respondent also has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of the unit employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has failed and refused, since about September 10, 1996, to continue in effect all of the terms and conditions of the 1989–1992 agreement by failing and refusing to respond to or process grievances, we shall order the Respondent to continue to process or resolve grievances as required by the 1989–1992 agreement, and to respond and process the grievance filed on behalf of Sandy Oxford.

ORDER

The National Labor Relations Board orders that the Respondent, Standard Brands Paint Company, Torrance, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing or refusing to continue in effect all of the terms and conditions of the 1989–1992 agreement by failing or refusing to respond to grievances filed on behalf of employees in the following unit or by informing the Union that the Respondent would refuse to process or resolve grievances until it received permission to do so from the Bankruptcy Court:

Included: All employees of the Respondent employed in its retail paint stores located in the State of Arizona.

Excluded: All other employees, guards and supervisors, as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Process and resolve grievances as required by the 1989–1992 agreement and respond to and process the grievance filed on behalf of Sandy Oxford.

(b) Within 14 days after service by the Region, post at its facility in Torrance, California, copies of the attached notice marked “Appendix.”¹ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 27, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 6, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to continue in effect all of the terms and conditions of the collective-bargaining agreement entered into with United Food & Commercial Workers Union, Local 99, affiliated with United Food & Commercial Workers Union, AFL-CIO, effective from May 1, 1989, through May 4, 1992 and automatically renewed through May 4, 1997, by failing or refusing to respond to grievances filed on behalf of our

employees in the following unit or by informing the Union that it would refuse to process or resolve grievances until we received permission to do so from the Bankruptcy Court:

Included: All employees employed in our retail paint stores located in the State of Arizona.

Excluded: All other employees, guards and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL process and resolve grievances as required by the collective-bargaining agreement and respond to and process the grievance filed on behalf of Sandy Oxford.

STANDARD BRANDS PAINT COMPANY